OFFSHORE SAFETY REGULATIONS

The European Perspective

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1 Introduction

'Let's remember that safety and concern for people must always be the top priority'.[1]

1.1 Topic and background

The topic of this thesis is to describe the existing safety regime in offshore installations in two major oil and gas producing countries, mainly in Norway and secondarily in the UK. Furthermore, the proposal of the upcoming European Regulation on 'safety of offshore oil and gas prospection, exploration and production activities' will be discussed and evaluated.

Norway and UK are undoubtedly leading players in the field of oil and gas, not only in Europe but also globally. Their presence in the business started decades ago, with Norway celebrating 40 years as an oil-producing nation in 2011[2]. Therefore they have both gained great experience in terms of exploring, planning and development of the offshore installations.

A crucial aspect of these offshore operations is that all that are engaged in them must always take safety into account. The exploration and production of oil and gas is by itself a dangerous activity, since these substances are easily flammable and contain dangers of explosion. If we further put in the picture the geographical area in which these activities are being conducted, in the North Sea, the Norwegian Sea and the Barents Sea under harsh weather conditions and far from the coast, it is evident how much importance should be put on the protection of health, safety and environment (HSE). The protection of human life comes always first in every kind of industrial operation and this can be guaranteed only by securing a high safety level.

[1] Magne Ognedal, director general of the Petroleum Safety Authority in 'Safety status & signals 2011-2012'.

[2] The first oil discovery on the Norwegian Continental Shelf (NCS) took place in 1969 (field of Ekofisk) and the production of oil begun in June 1971.

Given the strong presence in oil and gas production of Norway and UK over the years, together with economic and political stability, it comes as no surprise that both countries have developed an efficient safety regime. Of course accidents do happen but their safety regime is considered to be one of the best internationally, with other equally significant oil-producing countries asking Norway for information and guidance in order to improve their safety level (USA after the *Deepwater Horizon* accident in the Gulf of Mexico in 2010).

Safety in this kind of operations contains a variety of parameters. Use of technologically advanced equipment and materials on the installations, well-educated and trained staff, a high level of communications off- and onshore are only some of the basic aspects that contribute to safety. In this thesis attention is primarily given to the very special -and in some aspects unique- Norwegian offshore safety system. Reference will be given to the British one as well, since it is considered more complete to see the safety frame under both successful regimes.

On the other hand, safety in petroleum activities is not only seen as a local challenge, but it is rather gaining wide attention. Namely, the European Commission intends to create a unified European safety system for offshore oil and gas activities to enable an increased safety in offshore operations and prevent fatal accidents from happening.[3] Especially after the disaster in the Gulf of Mexico in 2010, the Commission thought it was urgent to create a legal framework that will eliminate the risk of a similar accident to take place in Europe with disastrous consequences for people and the environment.

As good and logical as the intentions of Europe may be, this upcoming European Regulation (or Directive – this has not yet been clarified) has created lots of discussions among the parties involved. Both Norway and UK strongly oppose the implementation of this Regulation and this is another reason why both countries are being referred to in this thesis.

[3] 'Regulation of the European Parliament and of the Council on *safety of offshore oil and gas prospection, exploration and production activities',* draft of October 2011, COM (2011) 688.

In order to understand the intended European framework, the main points of the Regulation and the possible changes to the existing regimes will be evaluated. Furthermore, a critical discussion will take place about the advantages and disadvantages of such an attempt, as well as the reasons why the two leading countries in offshore safety (especially Norway) oppose it.

Needless to say, the European Union wants to ensure a minimum level of safety of offshore petroleum operations in all European territory. The protection of human life, health of personnel and of the environment are top priorities and must be guaranteed through law. The question is whether such a project is achievable and how a successful safety regime of the North Sea can be applied in the whole of Europe with all the different circumstances that are observed.

1.2 The outline of the thesis

In order to facilitate the examination of this topic, the thesis is divided into two parts. In the first one the Norwegian and the British offshore safety system are described, whereas in the second one there is the description and evaluation of the proposed European Regulation.

In more detail, chapter 2 contains the legal framework of the Norwegian safety regime with the necessary Regulations, Statutes and Decrees.

Chapter 3 discusses in detail the Norwegian offshore safety regime, its development and organization as well as the interlinked roles of both the State and the industry.

Chapter 4 outlines the British offshore safety system, its development after a major accident and its differences from the Norwegian.

Chapter 5 contains a presentation of the proposal of the upcoming European Regulation, explaining the reasons for its planning and the intended goal.

Chapter 6 provides a description of the arguments of Norway and UK towards the Proposal: Why do Norway and UK oppose its implementation? Furthermore, in chapter 7

there is a critical discussion about this European legislation: are there any problems that it may cause? What challenges will the Union face in the future related to safety in offshore oil and gas activities?

Finally, the main points of the thesis will be summarized with an emphasis on the general establishment of a high-standard safety regime in the European Union area.

2 Legal sources

2.1 Statutes, Decrees, additional Regulations

In Norway, the offshore safety regulations are found in the Laws, Royal Decrees and Regulations. Since the petroleum activities contain a variety of elements, e.g. health of personnel, working conditions, environmental issues and safety of installations, it is normal to have different pieces of legislation for each aspect. In other words, there is not only one Law that regulates offshore safety generally.

In this respect, for the first part of the thesis as described above, there are three statutes that deal with offshore safety and cover all aspects of it: i) the Petroleum Act 1996 (PA), ii) the Working Environment Act 2005 and iii) the Pollution Control Act 1981.

More specifically, the Petroleum Act regulates the offshore petroleum activities carried out on the Norwegian Continental Shelf (NCS). It also contains a chapter on general safety requirements.

The Working Environment Act regulates aspects about the protection of jobs and the working conditions onshore. Therefore it does not apply directly to safety and it will not be analyzed further for the purposes of this specific thesis, but it should be taken into account in order to complete the safety framework.

Lastly, since the engagement in petroleum activities entails by itself a risk of damaging the environment, the Pollution Control Act is also relevant, found in iii) although it will not be described in detail.

All the above are formal Acts that regulate petroleum activities in general, but contain few provisions about specifically safety. For this purpose, the Acts give the power to the King to further regulate all the necessary details on specific matters through the

issuance of Royal Decrees. Pursuant to the Decrees, further Regulations are issued which are also applicable.

In this respect, the most important and basic piece of legislation is the Royal Decree of 12 February 2010 which formed the Regulations relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the *Framework Regulations*).[4] These Regulations give the basic rules in offshore petroleum activities. Pursuant to them, there are four supplementary Regulations relating to Management, Facilities, Activities and Technical & Operational matters[5] that complete the picture of safety.

Finally, I also consider the Guidelines of these five Regulations to be very important, especially the Guidelines from the Framework Regulations. Although they are not legally binding, they provide a better understanding of the safety requirements and their purpose, making it clearer what these Regulations aim to achieve.

A brief reference to the British offshore safety Acts will also be given.

As far as the second part of the thesis is concerned, the basic legal source is the European Regulation itself.

2.2 Legal literature

The legal literature cannot be regarded as legal source stricto sensu, however it provides useful information about the advantages of the relevant safety systems, their historical development and the needs for the future. Therefore, in this thesis, the literature (Norwegian and British) plays a role in the first part where the highly qualified safety regimes of Norway and UK are discussed.

[4] The 2010 Framework Regulations carry on and combine the content of the following: the 2001 regulations relating to health, safety and the environment in the petroleum activities and the 2003 temporary regulations relating to safety and working environment for certain land facilities and associated pipe line systems.

[5] The Framework and management regulations are applicable both offshore and onshore and they should be read jointly. The regulations for technical and operational matters apply only to certain onshore facilities.

Since the European Regulation has not yet come into force, there is no helpful additional literature on this matter.

Relevant literature will be cited when necessary.

2.3 Articles, non-papers

For the critical discussion about the proposal of the European Regulation, relevant articles in the British and in the Norwegian press as well as in the European Commission's press center have proved very useful. Through them it was possible to better understand the reasons behind this coming legislation, the different implicated arguments and consequently form a view on the matter. In addition, the non-papers containing the position of the Norwegian State presented to the Commission were taken into account.

3 The Norwegian offshore safety system

3.1 General approach

Since the beginning of the petroleum exploration and production on the Norwegian Continental Shelf in 1965, the need for safe operations had been pointed out, both from the industry and the State authorities. In an industry like this, the protection of people and the environment always stays in the forefront. Continuously improving the level of safety in offshore petroleum operations aims to avoid accidents from happening, which would cause significant harm to health, environment and installations.

As a starting point, the use of advanced technological materials on the offshore and onshore installations plays a very important role in safety: the more recent technological developments are used, the higher levels of safety are supposed to ensure. For this reason, the safety regulations oblige operators/licensees to continuously upgrade their equipment standards, often following the advice of experienced scientists. They have to keep up-to-date with the latest developments and incorporate them into the industry.

In addition, the importance of building safety at the early stages of the activities (starting in the exploration phase) with early assessments and decisions has been pointed out by several experts. In this way safety will be more possible to achieve and more cost-efficient for the industry as well. Based on safety analyses that are required to be conducted about the different risks that may arise, major design changes and extra costs will be avoided.

However, the use of state-of-the-art technology is not by itself enough to eliminate the possibilities of accidents in offshore petroleum activities. Since the industry is organized in a rather complicated way, with many and different people and companies involved, other important factors should also be taken into consideration. It goes without saying that this sensitive business requires adequate training of personnel, a variety of ‘ad hoc’ decisions and a high level of attention among all departments involved.

For all the above reasons, it is evident that a set of political, organizational, economic and even psychological aspects intervene and determine the safety in offshore activities. All these should be taken into account when trying to reduce the possibility of an accident to happen. Of course the most important factor is legislation, which sets the goals that have to be achieved together with the appropriate means. Law also provides the competent Authorities with the power to enforce the requirements, in case they are not properly applied by the parties. Therefore the Framework Regulations that will be discussed below form the legal tool which outlines the goals, appoints responsibility and describes the enforcement measures to ensure offshore safety in petroleum activities.

The Norwegian offshore safety regime comprises different sets of rules which all intend to contribute to a higher safety level. Norway has established an efficient safety regime based on goal-setting rules and the performance of safety control by the industry through internal control systems, with the safety authorities monitoring the safety performance of the industry. The development of safety regulations and the performance of safety management will be further analyzed below.

3.1.1 Development of the offshore safety regulations in Norway

Norway has given importance to safety in offshore activities from the very beginning. However, it is normal that during these 40 years of oil and gas exploration and production the regulatory regime has evolved, giving way to more efficient practices.

In the beginning there was a set of rules which laid out very distinctive requirements aiming to make the industry follow them in an exact way.[6] The logic behind was that if the safety measures were clearly stated in the Acts, then the possibility to ensure a satisfactory safety level would be higher. The subsequent Decrees in the following years continued this path by laying down ‘do’s and don’ts’ that the responsible party was obliged to follow.[7]

[6] Royal Decree of 1967 on safety in exploring and drilling for sub-sea petroleum deposits.

[7] Royal Decrees of 1972 on framework for offshore operations, of 1975 on how the licensee should carry out his activities, of 1976 on safe practices for the production of submarine resources and of 1977 on working environment in offshore petroleum exploration and production.

In 1977 however, there was a blow out accident and in 1980 the *Alexander Kielland* platform capsized, causing the death of 123 people. It then became clear that a more efficient safety regime should be established. In 1985 the whole philosophy of safety regulation was changed and goal-setting requirements were substituted for the descriptive ones. A more substantial approach was needed in order to make the industry responsible for the safety in offshore petroleum activities. Therefore, the *internal control system* was introduced: it was not anymore sufficient for the industry to follow the straightforward requirements laid out by the regulations or the authorities. With the new system the operator and the licensee shall 'see to it'[8] that all facilities and activities fulfill the applicable safety requirements. By that expression, it is clarified that the operator has the overall responsibility to see to it that all applicable safety offshore rules are complied with. Taking this further, the term 'see to it' entails a duty imposed on licensees, employees, owners, contractors and sub-contractors to create a safety management through which it will be possible to ensure that all parties comply with the safety requirements.[9]

In other words, nowadays the industry has to identify by itself what needs to be done to ensure the necessary safety level and internally apply any possible corrections. This approach entails that every actor has the responsibility to enforce compliance with the safety rules. Individual responsibility gains in this way much more weight than it used to. So it can be said that there have been two main directions in the development of Norwegian law: the regulation of the activities in general and the development of the internal control system.

Another important characteristic of the Norwegian offshore safety legislation is the establishment of goal-setting rules. Established specifically in section 9-1 of the Petroleum Act, this requirement reads as follows: *'The petroleum activities shall be conducted in such manner as to enable a high level of safety to be maintained and further developed in accordance with the technological development'*. It is clear that the requirement according

[8] In the text of the Framework Regulations: 'påse', meaning the obligation of the licensee to ensure compliance with the safety regulations. This term has been used in this form in section 10-6 of the Petroleum Act and then in the Framework Regulations in section 7. The translation in English 'see to it' has dominated.

[9] This is the follow-up duty; see below 3.3.1 the description about internal control system.

to this section is to operate the petroleum activities in a well-planned way, taking their hazardous character into consideration in addition to other factors as environment and safety of personnel[10]. No specific solutions are provided by law– on the contrary the authorities publish functional requirements that show the desired results, while the operator and licensees must find the solutions.

This system is followed also by the Framework Regulations as will be analyzed below.[11] According to them, the operator has the overall responsibility to see to it that all relevant parties work to obtain the safety level desired. The operator is particularly obliged to continuously improve the safety level of his petroleum operations. The Acts and regulations do not lay down explicit details on what has to be followed; they rather put down a set of goals that have to be achieved in order to ensure the desired level of safety. Of course, in order to facilitate the implementation process, some guidelines and general recommendations are given by the authorities. However, they are not legally binding or mandatory; they are outlines trying to help the responsible parties to better fulfill their obligations.

Summing up, it is clear that the development of the Norwegian offshore safety rules has been adapted to the needs of the industry after consideration of the way that the highest possible safety level can be ensured. The combination of general, goal setting rules and individual decisions in special circumstances, increase the possibility to obtain a high safety level. Therefore, the goal-setting system provided the parties with the opportunity to take on the responsibility to choose by themselves the appropriate methods. So a characteristic feature of this safety development that will help understand the following analysis is the move from detailed requirements to more general functional standards.

[10] Section 10-1 of Petroleum Act, second subsection.

[11] Section 10 of the Framework Regulations.

3.2 Safety management system in Norway

3.2.1 Applicable Legislation

Before proceeding to the examination and analysis of the safety management system in Norway, it is considered essential to give the legal frame which determines how this system is operating.

It is evident that since the petroleum activities contain maritime operations as well, a combination of Acts will be applicable, regulating both petroleum and maritime matters. Of course the Act which is widely applicable on offshore operations is the 1996 Petroleum Act, which describes a variety of oil activities and stipulates that *'the petroleum activities shall be conducted in such manner as to enable a high level of safety to be maintained and further developed in accordance with the technological development'*.[12] This constitutes the basic and general safety requirement in the petroleum operations in Norway.

Apart from this Act, there are also others which are applicable in some parts of such activities. The Working Environment Act of 2005 regulates a variety of working conditions such as working hours and how working life shall be protected. It therefore applies also to the offshore personnel. In addition to this, the Ship Safety and Security Act of 2007 safeguards *'life, health, property and the environment by facilitating a high level of ship safety and safety management [...] ensuring a good working environment and safe working conditions <u>on board ships</u>[...]'*.[13] So this Act is applicable for the personnel which rests onboard a ship or in a floating device which usually stands by the oil installations to carry out various supporting tasks.

Moreover, as far as protection against pollution is concerned, the Pollution Control Act of 1981 applies.[14] Since petroleum operations are by their nature considered potentially polluting activities, this Act specifically aims to set down strict detailed requirements in order to protect the environment, as well as sanctions in case of breach.

[12] Section 9-1 of the Petroleum Act from Chapter 9 about Special requirements to safety.

[13] Section 1 of Ship Safety and Security Act – Purpose of the Act. Emphasis added.

[14] 1981 Act on protection against pollution and on waste.

Additionally, the Petroleum Act contains general provisions about extent of liability in case of pollution.[15]

The above mentioned Acts constitute a general legal framework which themselves contain little guidance as to what safety measures are really required. Therefore, the Acts give further power to the King to issue Royal Decrees, setting down in a more detailed manner the circumstances, conditions and rules applicable to safety. Pursuant to the Decrees regulations are issued which form the greater and more comprehensive picture of safety. In this case, there is one important piece of legislation forming the basis of the petroleum operations for safety: the 2010 Framework Regulations.[16] They describe the safety management system by pointing out the responsible parties (State and industry) and their role in ensuring the desired safety level. The Guidelines of these regulations explain each section in more detail, making it easier to interpret the short – sometimes- text of the regulations. Additionally, the Framework Regulations make it clear that among a variety of relevant Ministries and public bodies, the Petroleum Safety Authority (PSA) has the regulatory responsibility for safety, emergency preparedness and the working environment in the petroleum activities.[17] Of course there is a continuous collaboration between the PSA and other governmental bodies and organizations in order to better organize the activities, but the PSA is supervising all of them.[18]

It is also important to define the scope of application of the Framework Regulations. Section 2 defines that they apply on petroleum activities and on some onshore facilities which are further described in Section 6.[19] To be more precise, the Regulations

[15] Chapter 7 of the Petroleum Act – Liability for pollution damage.

[16] They came into force the 1st January 2011 and repealed all previous management and activities regulations trying to coordinate the safety in the best possible way.

[17] This responsibility was transferred to the PSA from the Norwegian Petroleum Directorate in 1st January 2004.

[18]Norwegian Directorate of Health, Ministry of Petroleum & Energy, Ministry of Labor and Social Inclusion, Industri Energi and other organizations engaged into petroleum industry.

[19] Letter e (onshore facility), section 6 refers to pipeline systems used for the transportation of gas or petroleum in land and are covered by the PA and the Framework regulations. The reason for this is that they constitute together with the offshore installations an undivided group and the one cannot exist without the other. Therefore it is considered safer to regulate them together.

cover safety aspects related to activities which are associated with subsea petroleum deposits and include exploration, production and transportation of oil and gas.[20]

The purpose of the Regulations is given in the first section, outlining the three main goals: promote high standards for health, safety and the environment when engaged in petroleum activities, continuously develop and improve the safety level and finally, implement measures to comply with the applicable requirements and achieve the goals laid out by them.

If the purpose laid out under letter b) of section 1 is divided into two parts, very interesting results can be extracted. Firstly, the 'systematic implementation of measures' serves as a basis for the establishment of the internal control system for the industry, which is an efficient way of managing the safety rules and conditions and it will be analyzed below.[21] Secondly, the phrase 'achieve the goals laid down in the legislation' makes clear that these regulations do not provide descriptive regulations but they rather aim to have certain results fulfilled. In other words, the authorities will exercise overall assessment on how the responsible parties (operators/licensees) follow the requirements and they will not check step by step if technical specifications are complied with.

As it is explained in the Guidelines regarding the Framework Regulations, in order for safety standards to be developed, a different approach from what has been traditionally used as legal tool should be implemented: the regulators are not providing ready solutions, ''do's and don'ts''; on the contrary it is considered more efficient to describe what should be achieved.[22] In this way, the involved parties (operators, licensees, personnel, the managers onshore) will gain a significant flexibility for their actions in obtaining the safety level required. After having assessed their strengths, their financial capabilities and competencies they will act respectively.

[20] See definition of 'petroleum activity' in section 1-6 letter c and 1-4, scope of application.

[21] See 3.3.1 internal safety control.

[22] An example: 'The petroleum activities shall be conducted in such manner as to enable a high level of safety [...]', section 9-1 of PA.

The goal-setting rules promote creativity and mood for further developing the established practices. If on the top of this there is a fruitful collaboration with the regulatory bodies, then only good results can be expected. This flexibility enforces also the sense of responsibility inside the industry: the central actors of a play should take care of the working environment and ensure that everyone working for them will stay safe. They know consequently that they have to bear the consequences of their acts – either good or highly unpleasant. So the goal-setting system provides the industry with a good incentive to always improve the safety practices. After the Macondo (Gulf of Mexico) accident it also became clear that a high level of safety is very important for the industry as such – as a 'license to operate'.

This of course does not mean that detailed norms cannot be found throughout Norwegian legislation. These guidelines, however, do not have a legally binding effect on the responsible parties, since they can choose other methods than those described in the legislation as soon as the desired safety result can be obtained. On the other side, one should bear in mind that the responsible party cannot deviate totally from the prescribed methods, since these are considered from the authorities to be the best and most suitable for safety. If the responsible party nevertheless is able to apply solutions different from the ones suggested in the guidelines, then he will have the burden of proof that he used equally efficient safety practices.[23]

All these functional requirements can be accused of being too general and therefore not so helpful. The responsible parties may face difficulties during the process of identifying what actions have to be made in order to achieve the desired safety result. Undoubtedly the specific do's and don'ts are easier to follow.

To sum up, the applicable Framework regulations contain functional requirements allowing the industry to choose how it will comply with them. Practically, the industry will follow the recommendations laid out by the authorities. But the most important thing about

[23] Section 24 of the Framework Regulations: '[...] the responsible party shall be able to document that the chosen solution fulfills the regulatory requirements'.

these goal-setting regulations is that the responsibility mainly lies in the heart of operations: on the operator and the licensee.

3.2.2 Exemptions and administrative decisions

Since the goal-setting rules may create problems of uncertainty or vagueness, the authorities exercise their power by monitoring the safety level in the activities through verification of the internal control systems of the operator and the licensees, inspections, administrative decisions and exemptions under specific circumstances. In this way, the general provisions of the regulations are transformed into individual, directly applicable practices which have taken into account specific circumstances.

As a starting point, the Petroleum Safety Authority has the authority to supervise the management systems established by the responsible party (operator) in order to ensure compliance with the rules for health, safety and environment.[24] Within this supervisory discretion falls also the power to grant exemptions to the operator or licensee in case special conditions are met. The PSA can decide for example that a kind of reports that generally have to be submitted by the operator, may not be submitted for one time by this specific company because it had made reports with similar content shortly before.

Another form of this practice can be the acceptance from the authorities to modify the requirements so that the operator can comply with them – preserving of course the safety standard. As far as the procedure of granting exemptions is concerned, this can be done either officially by the State itself or after application from the interested party.[25] For instance, the operator must apply for an exemption if he intends to deviate from a clearly specified method in the regulations. Needless to say, the authorities will consider all relevant circumstances that have been put to their knowledge and an exemption will apply to this specific operator only.

[24] Section 67 of the Framework Regulations.

[25] The application for exemption should contain a detailed description of the reasons of non-conformity and where this desire for exemption is based as well as other justificatory documents – see Guidelines regarding the Framework regulations on section 70.

Secondly, the individual decisions constitute another way of transforming the general requirements into specific ones. They are granted when they are *'necessary to enforce the provisions stipulated in these regulations'*.[26] Mainly, such decisions will be made by the PSA and not by the Ministries and their aim is to enforce the requirements stipulated in the provisions. So they are mandatory for the operator to follow but they do not create new requirements, only detailing or specifying the regulatory ones. The authorities collect the data concerning the specific operator and issue decisions that again, are applicable to him only.

As a conclusion, these two legal tools transform the general non-binding guidelines into individual practices with the ultimate goal to develop further the safety management of the operator. Each licensee operates under different situations (personnel, economic assets, experience etc.) and must therefore adapt to them – for that task the authorities are called into play ensuring that everyone complies with the regulations.

3.2.3 Safety control and enforcement

Based upon the description of the regulations applying to the offshore safety industry and the individual measures that the State exercises, it is important to examine how actually the State checks that the industry complies with the safety requirements. It has been clear that the Norwegian safety system is not being restricted to laying down a series of safety norms – it has to see actually that the operator conforms to the norms, in practice through, inter alia, the development of an internal control system.

It has been mentioned already that the PSA is a supervisory authority and its responsibility is to ensure compliance with the safety rules. Theoretically this includes all operators, licensees and sub-contractors, but in practice it is impossible to have a continuous contact with all of them, with limited personnel of 170 people. Consequently, the state safety control primarily takes the form of the supervision: *'[...] the PSA will carry out supervision within its respective area of authority to ensure compliance with the requirements [...]'*.[27] This means that the PSA leaves primarily the responsibility for safety

[26] Section 69 of the Framework Regulations.

[27] Section 67 of the Framework Regulations – supervisory authority.

to the industry and its most important job is to check that the operator is fulfilling his responsibility. Supervision includes contact with the involved parties in the forms of investigations, applications and meetings.

Nevertheless, a key activity of the PSA is the conduct by its employees of audits and actual verification, in other words taking a direct look into the field.[28] This safety control method had also been used traditionally, before the existence of internal control within the industry. This action entails a possibility for the employees of the PSA to check 'with their own eyes' all kinds of compliance e.g. the strength of the cranes' structure, the quality and maintenance of the drills or the high-tech communication equipment. All these activities play a significant role for safety because non-compliance with these can have direct hazardous results. In this way the PSA can identify how the safety operations are being conducted and how direct and efficient the emergency response can be. But of course, as mentioned before, having over 75 fixed installations and 40 mobile units on the NCS under its control, this direct monitoring can mainly be sampling.

To conclude, the state safety control is being conducted both by verification and supervision. However, since the basic element of offshore safety is the internal control system, supervision gains more weight for the entire task of the Authority. The basic conviction is that the government cannot 'inject' quality into an industry – this has to come from the industry itself in order for safety to be as efficient as possible. This is also a reason why the PSA has a relatively low number of 170 employees– since its work mainly constitutes of advisory-supervisory character and not of so extensive 'on the spot' checks.

The question that remains is what happens if although the clear safety norms, the frequent supervision and the individual decisions, the industry is not complying with them. Then the authorities have the power to enforce the necessary requirements by issuing various kinds of sanctions.

The general provision for possible sanctions is found in section 72 of the Framework Regulations: *'Provisions with regard to penalties and other sanctions […]*

[28] An offshore audit comprises many different activities – in-depth reviews as well as formulating the overall picture.

apply to violation of requirements stipulated in and pursuant to these regulations'. One should look into the Petroleum Act which is widely applicable and helps a bit more in that respect. So, section 10-13 of the Petroleum Act describes the revocation of the license in case of 'serious or repeated violations'. In other words, a license granted for exploration and production can be revoked if the licensee breaches seriously a safety regulation (even once) or if he continuously violates a safety standard. It should, however, be noted that this provision has never been used in practice. Apart from this, section 10-16 of the Petroleum Act is also relevant, stipulating 'warning' fines as enforcement measures: a daily fine can be imposed until the responsible party conforms to the authorities' decisions. Suspension of the petroleum activities is also possible if violation continues, as a means of exercising pressure to the operator to comply as quickly as possible.[29] As a last measure penal provisions are called upon willful or negligent violation of the safety provisions.[30] However, in practice these sanctions are rarely used. Issues related to safety are solved through dialogue between the PSA and operators, through which the operators normally must fulfill certain conditions set by the PSA.

Summing up, state safety management is composed by safety norms that have to be met and a system which audits if these norms are met. So the state safety management consists of both legislation and supervision to ensure that the *industry*[31] itself will make the correct choices. By its turn, this safety control is performed primarily by the industry itself, through verifications under the internal control system, for all the reasons mentioned above. Therefore, the safety management is conducted both by the State and the industry: the State lays down the necessary rules and supervises their efficiency, whereas the industry is obliged to acquire responsibility by establishing an internal control system and carry out verifications according to it. These two major players in the oil and gas arena form the concept of safety management which ensures the high level of safety in petroleum activities.

Therefore, it is also very important to have an insight into how the industry performs its safety management.

[29] Section 10-16 of the PA, 3rd subsection.

[30] Section 10-17 of the PA describing imprisonment as penal provision.

[31] Emphasis added.

3.3 Industry safety management

3.3.1 Internal control

As mentioned before, the state issues goal-setting rules on safety in the petroleum activities and monitors their application by the licensees. The safety control as such is carried out by the industry itself, through the internal control system: the operator has to implement measures according to the regulations and generally adopt an efficient system for certification of the correct application of all the safety requirements in his petroleum activities.

The general obligation for the internal control system stems from section 10-6 of the Petroleum Act which stipulates the duty of the responsible party to comply with the regulations 'through the implementation of necessary systematic measures'. In other words, it is not enough to follow the direct or indirect safety norms found in the legislation. In addition to this and more importantly, the operator/licensee shall *see to it* that everyone carrying out work for him is complying with the safety regulations. This means that the operator bears two closely-connected duties: i) a high active duty to ensure that the activities are being operated safely and additionally ii) a follow-up duty to see that others performing work for him follow the regulations too. The importance of this follow-up duty becomes obvious since it is clearly mentioned in both the PA and the Framework Regulations.[32]

It goes without saying that the so clearly expressed see-to-it duty applies throughout the petroleum operations; it is in other words a fundamental obligation coming into existence from day one and lasts till the end of the activities. Basically, the operator is defined as the responsible party[33] and therefore responsible for a daily duty to manage successfully the petroleum activities. Needless to say, the licensee and contractors and sub-

[32] Second subsection of section 10-6 of the PA and section 7 of the Framework Regulations.

[33] Section 6 letter a) of the Framework Regulations.

contractors retain the obligation to also see to it that all applicable safety requirements are complied with.[34]

The internal control system expresses the culture that has dominated for a long time in the Norwegian offshore industry. It is primarily the individual player's duty to comply with the regulations. The operator should for this goal establish a management system with all the necessary partners, teams of experts, risk analyzers etc. and follow-up continuously that the participants of the activities comply with the requirements.

The internal control shall ensure that all measures concerning safety will be dealt with a coordinated manner, in a systematic and planned way. The industry itself will define how it will correct failures or further develop successful practices. The PSA has made it clear that weight is given to the executive management of the operator of the production license because he possesses an overview of the operations; he knows the weaknesses and what to do to cure them. Through this entire plan, the safety regulations and the authorities will be at his side showing the desirable way.

It is also crucial to mention the importance of the individual responsibility of all people involved in petroleum activities – from the subcontractor to the employee working on the platforms. The success of the internal safety control system is based not only on its central management, but also on the special experience and knowledge of the people performing the actual work. Of course it is not only the operator or licensee that contributes to the safety. Since there are plenty of people involved in the industry, all have to do everything possible to ensure safety. The employers must ensure a safe and productive working environment and their employees shall contribute within their tasks following word by word the instructions.[35]

Moreover, it is very important that all players of petroleum activities work closely together in order to achieve the desirable safety result. In Norway, the 'tripartite' collaboration between companies, workers' unions and the government has been long

[34] See the Guidelines regarding the Framework Regulations about section 7, explaining in detail the various responsible parties and their duties.

[35] Section 2-3 of the Working Environment Act and section 7, 4th subsection of the Framework Regulations.

established and contributes to the overall safety. It is normal however to face different challenges when various interests are involved, but Norwegian working life has achieved a satisfactory level of partnership among these parties. Consequently, each one adds his knowledge from a different aspect of the industry.

3.3.2 Connection with state safety management

In the above analysis, it has been made clear that the players obtaining the desired safety level in the offshore activities are two: the state and the industry. The concept of the safety management contains two basic directions: firstly the existence of the safety norms (in the form of objective-setting regulations) and secondly the establishment of a system that these rules are complied with. As far as the two players are concerned, each one exercises its task differently but with interlinked results.

Seeing it closer, the state lays down the norms which it thinks necessary for safety. Then, it checks that these rules are followed by carrying out supervisions or issuing individual decisions when special circumstances so require. But most importantly the state gives to the industry the freedom to decide how the safety standards shall be achieved. This brings us to the internal safety control carried out by the industry itself, a planned and systematic management which exists internally, to check compliance. During this process the safety requirements lead the way. The industry takes into account all updates, reports submitted by other contractors which are all made public by the PSA and makes the appropriate choices to correct deficiencies.

Therefore, it is evident that the relationship between state and industry safety management resembles a circle: the state lays down regulations – it checks through various activities compliance of the industry - the industry implements a system that by itself checks if the rules are followed – this internal control is by its turn subject to verification by the state.

Although it may seem complex, things look easier upon concentration on two parameters: the combination of state and industry in installing safety and the major importance of the internal control system. In this way, the industry bears responsibility and is obliged to create a well-structured safety system. It is obvious therefore that the

Norwegian offshore safety has been built step by step, through thorough consideration of how the best safety results can be achieved.

4 The British offshore safety system

4.1 Introduction – the Piper Alpha accident

Undoubtedly, UK is another leader in the European offshore industry, having established through the years a well-functioning safety regime. Together with Norway, they have created a safety practice which serves as a model for the whole European area. This is the reason it has been considered appropriate and useful to refer briefly to the British offshore safety system. A description like this will enable a productive comparison between the most successful offshore safety regimes in Europe and will give a better understanding of why the two countries oppose to unified European rules about safety offshore.

The development of the offshore safety rules in the UK differs from that of Norway. Unfortunately, it is the case that changes and evaluations of safety regimes take place after fatal accidents happen. This was also the case in UK, after the Piper Alpha disaster. To be more accurate, one could claim that the offshore safety system could be divided in two phases: pre- and post the Piper Alpha disaster.

In July 1988, a series of explosions took place in the Piper Alpha production platform situated in the North Sea, causing the death of 167 men. It was the worst disaster the offshore petroleum industry had ever experienced, both in the UK oil production industry and globally. This accident was the starting point for the British offshore industry to review its established safety regime for offshore petroleum operations. After the shock, a public inquiry into the incident was ordered, which was carried out by Lord Cullen. The report went through all the details of the accident and revealed quite a lot of inaccuracies and unsafe practices that had taken place.

Until then, there was a *prescriptive*[36] regulatory regime dominating in the industry, in the sense that there were specific requirements that needed to be followed. This was also the case in the early years of the Norwegian offshore system.[37] More precisely, in UK there were safety norms needed to be followed and the public authorities were provided with a checklist in order to see if there is compliance with the regulations. That was a rather stiff system, where participation of the industry control by itself was excluded.

The report from Lord Cullen published in 1990 went towards two main directions: '*What were the causes of the disaster and what should be recommended with a view to the preservation of life and the avoidance of similar accidents in the future*?'[38]. The report revealed several causes of the accident such as technical problems, bad maintenance of some parts that should been repaired and mostly problems in the communication system.

Lord Cullen proceeded in a detailed recommendations' program which basically reviewed the whole British safety system of the industry till then. Actually 106 recommendations were made towards the direction of updating the management system regarding safety. More specifically, this report introduced a more 'open-ended' scrutiny of the installation in the form of a Formal Safety Assessment (FSA): for all offshore installations every company has to produce an FSA to assure that its operations are safe.[39] Of course it may take time to execute such a program, but its efficiency had not been doubted.[40]

The most important development has been the introduction of the so-called objective-setting legislation, which was very welcomed by the operators because it provided them with more flexibility in the course of compliance. Additionally, the most important suggestions driven out from the Cullen report were the high education and training of personnel, as well as of the onshore management at all levels. Also the importance of the human factor and of communications in order to have a better safety regime was highlighted. In particular, it was discovered that the Piper Alpha disaster

[36] Emphasis added.

[37] See above 3.3.1 about the development of safety regulations.

[38] 'The Public Inquiry into the Piper Alpha Disaster' (Cullen Report 1990), para.1.1.

[39] Similar to the documentation duty in the Norwegian safety legislation.

[40] See R. Cox, M.Walter 'Offshore safety & reliability', p.10.

resulted more from inadequate communication than from defective technical equipment. Therefore, effective communications among the various teams during the drilling operations (drilling team, production team, and onshore team) as well as knowledge of the works/responsibilities of each one are fundamental for safety.

4.2 Contemporary regime – comparison with the Norwegian safety system

Nowadays, the applicable legislation for the offshore oil activities in the UK includes the Petroleum Act of 1998 which regulates similar issues with these in the Norwegian Petroleum Act 1996 and the Petroleum Licensing Regulations 2008 describing the conditions for granting a license.

After the disaster in Piper Alpha the road towards a more goal-setting approach of the new regime which encourages the initiative in self-regulation was opened in UK. Nowadays, the individual operators rather than the regulator have to constantly ensure that all risks are reduced to a level as low as reasonably practicable. According to surveys, this new management system is considered to be very beneficial to most operators; they have acquired a better understanding of the risk that is involved and therefore they can be more efficient in safety terms. Generally it has been publicly accepted that the most significant changes brought in the British offshore safety system after the Piper Alpha disaster were made not in the technical sector but in the management procedures which therefore enabled the development of safety in the industry.

For the time being it looks more important than ever to look towards a more holistic approach to safety assurance, meaning not only more formal safety requirements but also greater public visibility. Design and assessment methods are crucial since the first phases of offshore activities are crucial in order to ensure efficient safety.

The responsible public bodies, the Petroleum Engineering Division (PED) together with the Health and Safety Executive (HSE) kept on pointing that the government cannot have direct legal responsibility for offshore safety, it rather enforces the network and seeks by guidance to assist those responsible. For a long time the regulators limited themselves to a mere prescription of rules. And still, this prescription was not a result of risk

assessment or adequate inspection. As a consequence, the industry was more focused on the cost-reduction and could not see the problems or the reality which needed an efficient safety management.

Until now, it has been quite clear that the two major European offshore systems (Norwegian-British) have many similarities. The development may have been different and differences still exist: the British offshore safety system contains until today more do's and don'ts than the Norwegian that has fully implemented the internal control from the industry. On the other hand, the workers' unions in Norway have extended rights and power into the industry, which is not so much the case in the UK. However, the most important remark is that in both countries a system of goal-setting regulations has been established. The state cannot have always an eye on the operations; therefore the description of safety objectives is of high significance.

The analysis of the two leading offshore regimes in petroleum operations is followed by the description of the upcoming European Regulation (or Directive) which attempts to regulate offshore safety in such activities in Europe.

5 Proposal of the European Regulation[41]

5.1 Background

In April 2010 a disastrous accident took place in the Gulf of Mexico after the explosion of the *Deepwater Horizon* which was drilling for BP. The consequences were fatal in every aspect: 11 men were killed, 17 injured and during three months the oil was flowing unstoppably, releasing 4.9 million barrels of crude oil into the sea. BP was called to pay $20 billion to the victims who were raising thousands of claims daily. Needless to say, the environmental damage on the marine habitats, the sea and coast life in a line of hundreds of miles was very extensive.

This accident was the largest accidental oil spill in the history of the petroleum industry and raised extensive awareness from all of its involved parties worldwide. The report that followed the accident revealed a seriously defective safety system due to the cost-cutting attempts BP was making at the time. This was highly criticized and brought to surface the dangers of such a policy: the loss of human lives, the environmental catastrophe and the huge compensation costs afterwards. Therefore it became more evident than ever in the petroleum industry that a high level of offshore safety has to be maintained in places where it is already established, or introduced in countries where it is not so well-developed.

The European Commission became especially concerned about safety matters in the offshore petroleum activities conducted in the European countries. In Europe oil and gas operations are mainly and traditionally carried out in the North by Norway, UK the

[41] According to the draft of October 2011, this is a Proposal for a Regulation of the European Parliament and of the Council on 'safety of offshore oil and gas prospection, exploration and production activities'. The latest draft of September 2012 refers to a Regulation of the European Parliament and of the Council on 'safety of offshore oil and gas operations and amending Directive 2004/35/EC (hereafter: the Proposal).

Netherlands and Denmark. But lately other countries in other regions of Europe are planning to begin oil and gas exploration and production, such as Malta, Cyprus and Greece or countries around the Black Sea. Of course for these countries the petroleum operations will be a completely new activity with all the risks entailed by starting a new business. Another factor that is adding concerns in the European Commission is the geography of Europe itself: many of its waters are closed, not having easy access to the open ocean and therefore a petroleum accident could immediately and extensively destroy sea and coast. A similar *Deepwater Horizon* disaster in Europe would actually have enormous consequences on marine life, the environment, tourism and so on.

So, the accident in the Gulf of Mexico revealed the extent of consequences that a possible disaster could have in the European area and constituted a motive for the Commission to take action and to ensure a high level of safety in offshore petroleum activities in Europe. Of course the countries in the region of North Europe could serve as a valuable example for safety in offshore oil and gas activities: they have been successfully producing oil and gas for decades and have over time developed a high level of safety, so their experience is undeniable; one could therefore claim that they can themselves regulate safety, without the European guidance. But there is always room for improvement, let alone the necessity for sharing of information from the part of these 'leading', in terms of offshore safety, countries.

On the other hand, the upcoming oil and gas operations in European countries which are totally inexperienced about the field, in conjunction with the disaster in the Gulf of Mexico made it clear that action from a central body inside Europe should be taken: safety requirements are urgent and have to be applied extensively in all Europe.

5.2 Intended goal

For all the reasons described above, the Commission and the European Council proposed a new piece of legislation *'which will ensure that European offshore oil and gas production will respect the world's highest safety, health and environment standards*

everywhere in the EU'.[42] In other words, the European Bodies decided to create a mandatory piece of legislation with a view of ensuring high levels of safety in offshore petroleum operations in order to avoid major accidents from happening. It will be applicable throughout the whole European area.

Initially, the Commission intended to create a Regulation in order to be immediately incorporated into the legislation of each Member State. However, some involved parties (countries, industry) claimed that it may be better to introduce a Directive and leave the methods of implementation to the Member State. This discussion followed the reaction raised primarily from the UK that a Directive would more efficiently meet the necessary requirements.[43] Until this moment, it is not sure what kind of form this legislation will have – Regulation or Directive. The majority of the European Council though has been in favor of a Directive format.

The petroleum operations are characterized by complexity and high pollution risks. These two substantial elements go to the root of the emergence of this regulatory attempt of the European Union. Additionally, some risk management practices related to these activities have been proved inadequate even in the traditionally oil-producing countries. Since most of the oil and gas operations in Europe are conducted offshore, it is considered to be more and more urgent to establish a set of regulations about offshore safety.

Clearly, the Member States engaged in such operations follow a variety of rules concerning safety. The national regulatory systems present a number of differences, something that creates barriers in the productive comparison of the successful regimes in order to continuously ameliorate them. Also most of the industries involved might present at some point a kind of defect, although they operate in first-class safety systems. Generally it is considered by the European Commission that the risk for occurring of an accident in offshore installations in Europe is quite high. Therefore there is a need to

[42] From the introduction of the Proposal, October 2011.

[43] See below 6.2. A Directive format has been already published in September 2012.

strengthen the existing regulations and re-define centrally the legal framework under which these activities will be carried out. The Commission strongly believes that a unified regulation inside the European area will eliminate hazards and effectively protect life and the environment.

Consequently, it can be said that the main objectives of this Regulation are four: i) introduce a major hazard control system applied in the Union waters by using the best practices of the industry, ii) implement in all European jurisdictions the best regulatory methods, iii) introduce a very efficient emergency response practice in case of accidents and iv) update the liability provisions of the Union, making them clearer. By achieving these goals, the chances of having a major disastrous incident in oil operations will be significantly diminished[44].

It is important also to note that towards that direction, the Commission set up the 'European Union Offshore Oil and Gas Authorities Group'[45], composed of the countries' national authorities with the task to discuss, promote and identify the best practices of the industry in order to continuously improve offshore safety. Norway has been invited to also participate in this group.

The Union recognizes that some Member States can show great experience and use advanced technology on their offshore petroleum operations, namely the Commission admits that 'some Member States have offshore regulatory systems considered world-class'. Nevertheless, the Commission believes that individual – in the sense of national – regulation is not enough: high-end offshore safety legislation needs to be guaranteed throughout Europe since all regimes 'have room for improvement'. Distinctive rules, clear liability, strong collaboration and exchange of information among the countries have to be included in a clear and mandatory set of rules. The Commission also recognizes increasing

[44] See also the explanatory memorandum about the grounds for and objectives of the Proposal.

[45] Decision of 19 January 2012, 2012/C 18/07

fears about safety offshore, given the fact that other countries are coming into the 'oil arena', without previous experience or knowledge.

Consequently, a need has arisen for a unified regulatory European framework with the goal to establish strict controls on the operations, fast and efficient emergency response and clear liability of the parties in case an accident nonetheless occurs. So one could say that the goals this Regulation intends to achieve are twofold: directly apply in all European countries a specific offshore safety system, and long-term (and most importantly) ensure a stable safety regime by reducing the risks linked with offshore petroleum activities. In this way it is hoped that human life and the –already sensitive- environment in Europe will be adequately protected while working on oil and gas production at the same time.

5.3 Content of the Proposal

At this point it is important to describe the content of the Proposal, emphasize the crucial provisions and highlight the issues that raised doubts from the leading countries of the industry, namely Norway and the UK.

To begin with, there are also other Regulations or Directives falling into the regulatory area of this Proposal. These are described in the explanatory memorandum of the Proposal and they are worth mentioning because they constitute together a grid of rules applicable on offshore petroleum activities.

Firstly, it is the Environmental Liability Directive[46] which regulates liability for damages to the environment and serves as a basis for the part of this proposal dealing with liability. Secondly, the Environmental Impact Assessment[47] is relevant, regulating the impacts on the environment that certain projects (such as oil activities) may have and their assessments. Further, it is the Waste Framework Directive[48] fully applicable to oil spills and therefore highly relevant. Moreover, the Directive for health and safety of workers at

[46] 2004/35/EC

[47] Directive 85/337/EEC with the latest amendment being 2009/31/EC

[48] 2008/98/EC

work[49] is being strengthened at the current Proposal in order to include notification schemes and risk assessments to be submitted. The Directive for granting hydrocarbon prospection, exploration and production authorizations[50] is of course the basis for granting licenses for oil and gas exploration and production and is being enriched with more obligations during the licensing process. Lastly, the Proposal introduces a new system about emergency response through the combination of EU Civil Protection Mechanism, the Monitoring and Information Centre and the European Maritime Safety Agency (EMSA).

Before the drafting of this Proposal, the Commission went through extensive consultations and discussions with a variety of interested parties about the main aspects of the intended regulation. The views of the Member States, the industries and the experienced operators are of invaluable importance when such a practical piece of legislation is being entered into. Moreover, NGOs and specialized companies (for example classification societies) were invited to respond to this Proposal. All in all, between March and May 2011 the Commission received a total of 64 contributions from interested parties.

Generally speaking, a complete set of obligations for the operators, the Member States and the Commission are described. The operator is defined as 1) the operator of a production installation or 2) the operator of an exploration well or 3) the operator of a non-production installation, making one clear definition of this legal person impossible[51]. The operator has to submit to the public authorities (‘competent authorities’ in the Proposal) a major hazards report (hereafter: MHR)[52] containing every technical detail about the installations together with all risk management plans. The Member States carry the primary duty to establish competent authorities to supervise offshore safety and respond accordingly in case of accidents. The Commission from its part established the Offshore Oil & Gas Authorities Group that was mentioned above in order to better coordinate attempts towards improved safety offshore in oil and gas activities.

[49] 92/91/EEC

[50] Directive 94/22/EC

[51] Article 2 (definitions), number 22 of the Proposal.

[52] In the latest version it is referred to as ‘report on major hazards’.

In the first chapters of the Proposal, the articles describe how the major hazards shall be prevented by establishing safe installations and systematic assessments of the likelihood of hazardous events to take place. The Proposal also dissociates the exploration from the production license: each kind of license may be granted to different licensees. This provision initially came to a complete contrast with the Norwegian practice of granting one license for both exploration and production and therefore in the latest version it was slightly changed. The authorities may grant a production license to the same licensee who holds the exploration license, subject to consideration by the competent authorities of certain relevant information.

The national competent authorities have general supervisory power over the offshore activities.[53] They are appointed by the Member States, they have to be independent and they are equipped with the power to accept MHRs submitted to them by the licensees, assess various reports, perform inspections and impose enforcement measures. They can also prohibit an operation if it is proved seriously defective.

Especially for the MHR, there are detailed specifications outlining its content, whether it is about a production or a non-production installation. Separate annexes describe all technical, managerial, environment-related and operational aspects that need to be mentioned in the MHR in order for the competent authority to give its acceptance and allow further operation of the installation. In short, the MHR must describe all design and management systems used by the operator and have to be submitted for acceptance before the actual operation starts.

A basic new element that this Proposal introduces is the independent third party verification.[54] This scheme must be established by the operators, described in the MHR and will be based on certain criteria. This third party will assure that the specified safety

[53] Article 8 of the Proposal.

[54] Article 15 of the Proposal. In the latest version of September 2012 is referred to as ‘independent verification’.

systems, the risk assessments and the hazard control systems are up to date and satisfy the minimum desirable safety level. It may have different legal forms (natural or legal person) but it must be totally independent from the operator in order to be completely trusted when called to verify written statements about the industry. After the verification process is completed and published, the operator shall follow the advice provided by the verifier and act accordingly.

Furthermore, it seems that the Proposal puts a lot of weight in the exchange of information among the Member States and between the States and the Commission.[55] Transparency of the activities is also part of the close cooperation among these parties and contributes to the better understanding of the safety practices as well as to their further improvement. The experienced countries in oil operations should add their expertise to the common group of knowledge and guide the less experienced Members. In this way higher safety standards will be promoted, protecting health and environment.

Finally, Chapter VII describes the necessary plans for emergency preparedness and response, as well as the mandatory cooperation of the States in case of a transboundary disastrous event. In the end of the provisions, there are Annexes containing more information about reports, various kinds of notifications and requirements for emergency preparedness and response.

As a general comment, it is obvious that the Proposal first and foremost intends to bring a certain level of safety in offshore petroleum operations in the whole European area in order to minimize the risk of accidents offshore. In this way human life and the environment will be protected, especially in regions in Europe where there is no previous experience related to these operations and therefore the risk of an accident is higher. However, the big issue that arises is what kind of regulatory changes this regulation will bring to the countries that have long experience in offshore operations, such as Norway and UK: how will the implementation of the Regulation affect their national offshore

[55] Articles 22, 23, and 27 about the cooperation between Member States.

safety regimes? What are the points in this legislation that are considered of doubtful efficiency by major participants? It is very interesting to examine some of these views because then both ‘sides’ will be understood.

6 Skepticism from Norway and the UK

6.1 Arguments of Norway

To begin with, Norway is not a member of the European Union, but it is a member of the European Economic Area (EEA). This agreement allows Norway to participate in the EU's internal market without being a member of the EU, but with the obligation to adopt all legislation related to the single internal market. This single market is based on four basic freedoms, the free movement of people, goods, services and capital within the EEA countries, as well as on the protection of the competition among them. Therefore Norway enjoys free trade within the EEA area and accordingly it carries the duty to implement legislation related to social policy, consumer protection, environment, company law and statistics[56]. In the case of this Proposal, Norway has officially decided that the Proposal is not EEA relevant and will therefore not be included in the EEA Agreement, whether in the form of a Regulation or a Directive. This is among other reasons because it does not fall within the geographical and substantive scope of the EEA agreement and therefore cannot be applicable to the NCS.[57]

This however does not mean that Norway will not collaborate closely with the Commission during its task to transmit the world-class Norwegian safety regime – as it is repeatedly recognized- in the rest of Europe. As a starting point, the Norwegian government completely understands the good intentions of the European Commission with this Proposal, namely to achieve a high level of safety in offshore petroleum activities in all European countries. With the view of new offshore developments coming in other

[56] Horizontal provisions relevant to the four freedoms, Part V of the EEA Agreement.

[57] According to the Minister of Foreign Affairs during his speech in May 2012 'Address to the Storting (Parliament) on important EU and EEA matters', this Regulation about safety is not EEA relevant because it falls outside the substantial scope of the EEA Agreement, namely the four freedoms. Only the protection of the environment can be considered relevant, but otherwise these areas attempted to be regulated are also outside the geographical scope of the Agreement, so Norway is not obliged to follow it.

countries in Europe, such as Malta, Cyprus, Greece or countries in the Black Sea, it is normal for fears to come up about how these countries will successfully deal with safety in offshore oil and gas activities. Norway is always engaged in efforts to improve safety offshore and has made clear its intentions to share its expertise with the European partners.

The Commission consulted various parties in the process of formulating the content, structure and the general framework of the Regulation in order to ascertain the views in various policy fields. The experienced countries of the industry were of course invited to share their knowledge, Norway included. So, Norway had made its views on the matter known to the Commission since last year, when the first Proposal was published (October 2011).

The general view on the Proposal from the Norwegian side is that its implementation in Norway would change significantly the already well-established offshore safety regime, which has been proved successful to Norway for decades. It is understandable that a piece of legislation is needed in Europe for safety in offshore petroleum operations but this should be done without affecting or even deteriorating the already experienced regimes. It looks that this Regulation can be helpful for countries that are starting now to engage in such activities, but it may cause more troubles than benefits in the North Sea, where a stable safety regime has been operated for more than 40 years now.

In more detail, as was mentioned above while describing the Norwegian offshore safety system, it is a non-negotiable rule in Norway that the unambiguous responsibility for safety in offshore petroleum activities rests with the operator. According to the long Norwegian experience on the field, only the continuous and overall duty of the operator of a production license to ensure compliance with safety requirements can guarantee a robust safety regime in offshore petroleum operations. Of course the operator has to ensure that his employees and contractors follow the necessary requirements and have established a solid internal safety control system. Accordingly, all kinds of contractors that the operator is working with have to be qualified, equipped with the necessary technological knowledge

and shall follow the relevant legal requirements. But once again, it is always the operator of the production license that bears the clear, overall responsibility of ensuring the pre-mentioned compliance with all applicable regulations, both during his activities and in the activities of people that work for him.

However, the Proposal does not always provide an unambiguous placement of responsibility for safety. This responsibility is placed in part by the competent authorities, in part by the operator and in addition the term 'operator' in the Proposal is not describing one but potentially three different legal persons. This ambiguity and consequently uncertainty about who is ultimately responsible for safety is something that the Norwegian offshore authorities consider dangerous for the offshore petroleum activities.

The basic objection that Norway presents is the division of responsibility introduced by this Proposal. The Norwegian government firmly believes that if responsibility is split in between various participants, the offshore operations will be subject to higher risks. In short, it is not sufficiently safe to have many responsible parties, as it will then be unclear who is ultimately responsible for safety. Experience has shown that a high level of safety can be obtained when its control is left entirely on the operator of the production license.

Further, Norway abandoned the system of prescriptive legislation in 1985, when it was made clear, after accidents that occurred that this manner of regulation was not safe. Instead, an approach of goal-setting rules was established together with the internal control system, which placed responsibility for safety primarily upon the industry. The EU Proposal constitutes another problem in the respect that it is very prescriptive by itself, laying down detailed requirements for every aspect of the operations. Consequently, it contradicts the fundamental element of the Norwegian philosophy for safety offshore regulation, making it hard to accept it.

On the other hand, it is understood that detailed regulations are needed in countries with no previous experience in such activities in order to achieve a high level of safety. It is always easier to follow specific and detailed rules using the 'tick-box' method, especially when there is no competence at the authority level to establish alternative, open-minded procedures. However, this tactic could bring safety in experienced countries some steps backwards, a situation which is not acceptable. It makes sense that Norway does not wish to come back to the era of traditional prescriptive legislation which was demonstrated to be undesirable in Norway; its objectives-driven approach has been successful so far and therefore it needs to be maintained. This is the formal position from both national authorities and the industry.

Thirdly, there is a strong skepticism from the Norwegian side towards the Major Hazards Report which is introduced by the Proposal, and its supposed function. In this report the operator is called to describe in every detail the technical standards of the installation as well as the management safety system he will be using, subject to the 'acceptance' of the competent authority. Only after the acceptance of the report can the operations start.

Norway also requires from the oil companies all these safety specifications described in the Annex II about the MHR, but there is no need for them to be formally submitted in as specific regard. All information of the industry is available to the authorities in case they wish to check up on them, but it is not required that they will be submitted in advance, neither have the authorities to 'accept' these reports. The procedure introduced in the Proposal enables the authorities to monitor all technical and operational details and then either accept or reject them; Norway claims that the Proposal therefore transfers too much responsibility for safety from the operator to the authorities. As a result, industry's initiatives will have a subsidiary role in safety in offshore oil and gas activities.

The Norwegian authorities' role is to supervise the activities while the overall responsibility for safety rests entirely with the operator. This further ensures that the

operator has to conduct the necessary risk analyses and obtain the desired level of safety. Therefore Norway cannot accept that the competent authorities will be obliged to assess all technical, economic and risk specifications included in the MHR and then formally accept them, because this will immediately mean that responsibility for safety will be transferred to the authorities – and this is not safe.

Moreover, the independent verification scheme described in article 15 of the Proposal is discouraged by Norway because it questions again the degree of the industry's responsibility. Although in the latest version of the Proposal[58] it is emphasized that *'the results of the independent verification shall be without prejudice to the responsibility of the operator for the correct and safe functioning of the equipment and systems under verification'*, the wording of the subsequent provisions creates confusion. The operation of this scheme places great responsibility on the independent verifier as well as on the authorities. As a result, all systems used in the installation will be assessed by the verifier and then re-assessed by the competent authorities. Consequently, the operator's overall responsibility and the motive for doing his best in order to continuously improve safety are being reduced.

Going further, the Proposal introduces the concept of internal and external emergency control. Internal plans are to be proposed by the operator, while external plans are the responsibility of the authorities. The internal and external emergency response plans and preparedness create concerns about who will be the responsible party. In Norwegian offshore oil and gas activities it is always the operator who is responsible for emergency planning and control, in the sense of establishment of an efficient response regime in case of accidents. The national public authorities will monitor that the operator is using all necessary equipment to eliminate the risk of a hazard and handle it appropriately if it nevertheless occurs. The operator is also strictly liable in case of an accident and totally responsible for cleaning up operations in case of pollution.

[58] Version from 21 September 2012

In the Proposal however the Member States through the competent authorities seem to be given extensive responsibility especially in case of handling an accident.[59] This approach transfers responsibility from the operator to the governmental authorities, discouraging in this way the operator from doing his best to prevent accidents, since others will also have the responsibility for that. In any case, this unclear placement of responsibility creates inconsistencies that cannot obtain the safety level that the Commission aims with this Proposal.

Apart from that, in Norway it is a rule that the same licensee will be granted an exploration and a production license, since it is normal that the oil companies carrying out explorations will also be given the right to produce what they discover. This is in accordance with the EU licensing Directive (94/22/EC) but not with this Proposal: in the first public draft[60] it was explicitly stated that authorizations for offshore exploration and production were to be granted separately, something that was in complete contrast with the Norwegian practice. In the latest version[61] in article 4 paragraph 3 this strict statement has changed but it is still left vague: *'[...] information collected pursuant to exploration can be considered by the Member State prior to production operations being authorized'.* It is evident that the Proposal contains no further explanations provided about how and by whom this information will be assessed and why these two licenses cannot be granted to the same oil company. Norway is not willing to incorporate such a practice in its legislative system.

Last but not least, Norway criticizes the fact that this Proposal gives great authority to the Commission to change the Annexes when considered appropriate. This implies a transfer of legislative power to the Commission, which is not acceptable to Norway. Also, the economic calculations about the measures and costs of risk reductions are not necessarily realistic, since there are many other factors that need to be taken into account.

[59] See Article 30, para 1 'Member States shall prepare external emergency response [...]' and para.4 'Member States shall take all suitable measures to achieve a high level of compatibility [...] between all Member States in a geographical region and further afield where appropriate'.

[60] Version of 27 October 2011.

[61] Version of 21 September 2012.

To sum up, the points that raise doubts in Norway about this Proposal presented an overview of the basic reason of the Norwegian opposition: the responsibility has to stay clearly and unambiguously within the industry and not be transferred to the public/competent authorities. The 'heart' of the Norwegian offshore safety regime, established since decades, entails the fundamental element of placement of ultimate responsibility for safety upon the operator. It is clear that all the elements described above imply a transfer of responsibility from the operator to the authorities. This approach may be helpful in geographical areas in Europe that are totally unfamiliar with oil and gas operations, but it will seriously and dangerously distort well-established safety regimes offshore. In Norway, safety offshore is based on initiatives of the industry and not on 'dos and don'ts' provided by public bodies. There has been made a huge improvement in this respect through experience, qualified personnel and competent companies and there is of course no intention to make steps backwards.

6.2 Arguments of the U.K.

The United Kingdom is together with Norway, the Netherlands and Denmark among the leading countries in Europe in offshore petroleum production. Together they produce almost 90% of oil and gas in Europe. UK has also, like Norway, built its expertise through the years, under unpleasant and harsh circumstances since it was often after an accident that higher safety standards were implemented. So, the United Kingdom's offshore industry functions in similar terms with Norway's and shares basically its view about the Proposal. That is, it puts into risk the well-functioning safety regimes in offshore oil and gas operations taking place in the North Sea. However, unlike Norway, UK has stated that it could compromise with a Directive instead of a Regulation.

Both the British government and the various oil and gas organizations[62] in the country make clear that they intend to always support moves attempted by the European

[62] For example 'Oil & Gas UK', the leading representative body for the UK offshore oil and gas industry (members are all kind of companies operating in the UK continental shelf).

Commission to improve safety standards. However they cannot accept that the UK's world class safety regime in offshore oil and gas operations will be undermined because of the Commission's will to establish a central safety control regime in Europe. The UK will definitely oppose the Regulation if this is considered appropriate in order to safeguard its safety practices known since decades. This does not mean that the Commission regards the offshore activities in the North Sea unsafe – on the contrary, the British side recognizes the Commission's aim to bring the rest of Europe in the safety levels which dominate in North Europe. Nonetheless, UK claims that this aim may have the opposite effect on the high standard offshore safety regimes.

More specifically, the UK highly doubts the efficient function and the intended aim of the MHR. As is the case in Norway too, all these safety requirements required by the MHR are present in the British system. Therefore an implementation of the strict, detailed MHR will bring confusion to the national authorities, let alone the huge amount of administrative procedures that will require a lot of human workforce. It is emphasized by the British side that the implementation of safety requirements takes a lot of time – this was besides the case after the Cullen report (following the Piper Alpha accident) was published: it took almost 7 years for the national authorities and the oil companies to implement the recommendations and adjust to the changes introduced by the report. So, the estimated time by the Commission needed for adaptation to the rules – 2 years- is not at all considered adequate.

Apart from that, the strongest argument against the MHR is that industry attention will turn from working to obtain the highest possible safety level to adapting to the changes, including rewriting internal safety reports to reach the level required by the Commission or restructuring the safety management. As a result, attention of the authorities will also be turned away from the actual field of action, the platforms or the workers at sea and be canalized to the re-assessment of the reports. This will require both people and all types of resources. The national regulator (or the competent authorities) will focus on ensuring that the MHR is in compliance with all applicable rules, putting into hazard the frontline of the petroleum activities and consequently safety. It is strongly

emphasized by the British offshore industry that focus should always remain on people because safety is dependent on them. The shift of resources from people to the authorities' offices for a period of time may be catastrophic for the safety of the industry in terms of health, safety and environment.

Moreover, the Proposal contains an impact assessment and a cost benefit analysis in case of an oil spill accident, in order to justify some provisions. However, the UK does not share the Commission's financial assumptions about various matters because they are based on inaccurate and arbitrary data. For example, oil and gas operations in Europe are unlikely to cause the same disastrous consequences on the environment as the Deepwater Horizon accident in the Gulf of Mexico, since the wells are much smaller and many of them need *'artificial lift even to flow'*[63]. Therefore the relevant prevention costs are not representative, not to mention the high costs that the implementation of this Regulation will bring to the Member states instead. According to some reports already carried out, these costs outweigh the benefits hoping to be accrued.[64] Also, the very prescriptive nature of the Proposal is criticized, because it brings safety in the North Sea countries some decades back, when prescriptive rules were dominating in the industry. This regime changed gradually and nowadays the UK also applies the same goal-setting rules system as Norway.

Additionally, the unlimited authority of the Commission to change or add safety provisions is deemed to contradict the Treaty of Lisbon, which outlines the right of countries to manage their own natural resources[65]. UK points out that the oil and gas operations require a very high level of knowledge; the mere specification of rules by a European body is not enough by itself to ensure safety.

[63] From 'Oil & Gas UK' statement about the Proposal published in Aril 2012.

[64] These reports were conducted by GL industrial services and Det Norske Veritas (DNV) in the 28th March and 2nd May 2012.

[65] Article 194 of the Treaty of Lisbon. The Treaty of Lisbon was signed in 13 of December 2007, amending the two former Treaties that formed the legal basis of the European Union: the Treaty of Maastricht and the Treaty on the Functioning of the European Union (TFEU).

Notwithstanding the above, the British authorities made it clear quite from the first publishing of the Proposal – and at the moment it is officially requested by them- that a Directive in the place of a Regulation would accomplish the intended goals of the Commission. This is a 'counter-offer' from the British part during the negotiations between the Commission and the states; UK claims that a Directive could better ensure application of major safety rules in Europe and maintain the leading offshore regimes without the load of bureaucracy that a Regulation would cause.

It becomes clear from the above that the UK opposes mainly to the direct implementation of the proposed rules, without consulting firstly relevant parties (industry, organizations, and authorities) that have direct contact with the offshore business. Therefore the basic problem in the UK is the legal form of the Regulation – it would prefer a Directive instead. What UK suggests is an informatory course of discussions between the advanced Members and the non-experienced countries about the offshore oil and gas activities. Given the fact that UK is willing to share valuable information regarding offshore safety and encourage inexperienced countries to follow the appropriate safety practices, it may contribute to the formulation of a proper Directive. According to the British view, in this way the countries that start now to carry out oil and gas operations will be able to smoothly incorporate the European requirements into their existing legislation, while the experienced countries will protect their existing regimes.

Moreover, other parties involved in the UK offshore industry supported the view that the current Proposal weakens the UK safety regime and puts at risk its high standards. Oil and gas workforce and industry represented by organizations such as Unite, RMT and Oil & Gas UK[66] claimed that the current UK offshore safety culture will be jeopardized by the central control of the European Union. Besides, the content of the Commission's Proposal will provide only slight benefits on the existing UK safety regime and on the rest of its neighboring countries: 90% of all European oil and gas production accounts for the

[66] 'Joint UK Industry and Trade Union Position Paper' published in 18 April 2012.

countries in North Europe, leaving only 10% into the regulatory scope of this Proposal, since its main goal is to regulate offshore oil activities in the non-experienced countries of such business.

The British Trade Unions put an emphasis also on the burdensome bureaucratic procedures that will be caused by the implementation of these rules, changing completely the already established regime. It is highly possible that through this procedure attention and resources will be taken, even temporarily, from the frontline activities is, thereby posing a significant risk to safety. Apart from that, the Trade Unions in the UK react to the Commission's indifference towards the Workers' Associations and the industry's representatives. It seems that the Proposal focuses only on prescribing regulations and does not intend to substantially listen to views from these parties; their decisive role in improving safety offshore is disregarded from the Commission. However, it is an established practice in UK (as well as in Norway with the so-called 'tripartite collaboration') that the regulator, employees on the platforms and public authorities collaborate closely and contribute together to high-end safety. Therefore an important account of these groups should be taken in order for a well-functioning safety regime to be established in Europe, as has been the case in the UK continental shelf.

Finally, it is obvious that UK Trade Unions and the industry oppose the extensive control power given with this Proposal to the Commission. Its application will dominate over national legislation (if it will come out with a form of a Regulation) and the Commission will have the authority to amend sections of the Regulation when considered necessary with the potential of introducing new ones. This high authoritative control will result in predominance of the Commission and to the substitution of the Member States' authorities by a centralized control. But this approach will crucially harm the well-functioning regimes in the sense that their operators, authorities and regulators are much more competent in the business than any other European body. Therefore, this shift of control from the States to the Union is highly undesirable from the British side.

Most importantly, UK sees in the form of a Directive a friendlier approach to the traditional and more experienced safety regimes. According to this opinion, only in this way will the high-class offshore safety regimes in North Europe stay intact. At the same time, the weaker Members will have the opportunity to start oil and gas explorations with a solid regulatory framework for the protection of health and environment.[67]

6.3 Summary

Some very important results can be derived from the above description of Norway's and the UK's positions against the Proposal. First of all, both countries are willing to contribute with their expertise and competency to a widespread application of offshore safety rules for petroleum activities in the whole Europe. The complexity and the nature of the oil and gas operations offshore demand a comprehensive, stable safety regime that will protect people and the environment. In this way more Member States and the European Union will be able to benefit from the great economic flow of the petroleum activities without harming people or nature.

On the other hand, an offshore accident in the European waters would have fatal consequences in every direction. The danger is not likely to come from the installations of North Europe since the safety regimes established there are highly competent, stable and efficient. But since new Member States are starting to be engaged in offshore oil and gas operations, it is prudent for the European Union to seek to introduce a detailed piece of legislation. This is a way to lay down the minimum requirements that have to be followed by all Members engaged into offshore oil and gas activities.

However, this attempt from the Commission to establish a unified regulatory framework in order to achieve high safety standards offshore is not considered successful, at least by the two leading countries of the industry. The most experienced actors of the field, Norway and UK, seriously doubt a regime where safety offshore will be controlled centrally by European authorities whose competence and knowledge is being questioned.

[67] See the written statement of the UK Parliament in 13 June 2012 about 'EU: Energy Council'.

Their fears have to do basically with the transfer of responsibility from the industry, the authorities and from the national regulators to European authorities. This attempted centralized control is undesirable because –as these countries claim- it endangers the well-functioning regimes of the North Sea. In other words the North Sea countries seem to say 'we are already competent to safely conducting oil and gas activities offshore, so there is no need for us to follow a legislation that will change our practices in a detrimental manner'.

However, there is a significant difference in the positions towards the Proposal between Norway and UK. In addition to the objections about the changes attempted, Norway believes the Proposal does not fall into the regulatory scope of the EEA Agreement of which it is member. Therefore it has concluded that this Proposal will not become a part of its national legislation even if it comes out in the form of the Directive. Having weighted the advantages and disadvantages, Norwegian authorities and industry believe that the implementation of such legislation will be detrimental rather than beneficial for the safety offshore.

From the other side, UK strongly supports that the Proposal takes the form of a Directive. In order to deeply comprehend the British argument, it is important to outline the differences between the two regulatory forms.

The legal basis for the exercise of the Union's competences is article 288 of the Treaty for the Functioning of the European Union (TFEU), which describes the forms that the legislative texts of the European Union can take. A Regulation is self-executing; it becomes directly part of the Member States' legislation without the need of implementation procedures or measures. Therefore it is absolutely binding in its entirety and has general application throughout the Union.

On the other hand, a Directive requires from the Member States to achieve a particular result without prescribing the means of reaching it. Each State will specify the methods that are considered appropriate towards the goal given by the Commission. So the

Directive is binding as to the result that needs to be achieved, but it leaves to the national authorities to choose the form and methods. The Member States are provided with a timetable to implement the intended result of the Directive, within which they mainly adopt their laws to the requirements of the Directive.

The above description helps to better understand why UK supports the Directive-alternative. It will allow UK a smoother transition into the introduced changes by the Union, since the required level of safety will be achieved through means determined by the Member State. This will provide the authorities with a certain degree of freedom to adapt to the European requirements. This is the best way, according to UK, to maintain its world-class safety regime; simultaneously, an important piece of legislation will be entered into in order to guide safe oil and gas operations offshore in other areas of Europe. A Regulation would cause difficulties for the British authorities because they would be obliged to rewrite their laws in order to bring them in line with the Commission's will.

It is obvious that whether it results in a Regulation or a Directive, this Proposal has created a lot of discussions about its intended goal and efficiency. In particular, the opposition from two major oil-producing countries constitutes a good reason to go into a critical view of the issue.

7 Critical discussion

7.1 Unified offshore safety in Europe

Under International Law it is a fundamental right of every State to exploit the natural resources that are placed in its soil as well as in its Continental Shelf. Several international Conventions have guaranteed this right, acknowledging the importance that the exploitation of the natural wealth has for the society and the national economy. According to the United Nations Convention of the Law Of the Sea (UNCLOS) *'the coastal State exercise over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources*' and *'no-one may undertake these activities without the express consent of the coastal State'*. For this purpose similar rights are granted for the establishment of sub-marine installations and drilling on the continental shelf.[68]

Taking this unambiguous right a step further, it is evident that the EU's energy policy is coherent with the international practices and on the top of it its aim is to *'organize, in a manner demonstrating consistency and solidarity, relations between the Member States'*.[69] The founding Treaty of the European Union (signed in 1992 at Maastricht) was significant among other reasons because it listed measures that needed to be taken for energy practices and infrastructure. Additionally, it strengthened the legal basis for environmental protection in Europe. The TFEU went into deeper detail about the policies of the European Union, among which is public health, environmental and energy policy. However, it was only in the Treaty of Lisbon, in 2007 that a European energy policy was officially approved, introducing solidarity in energy matters. In practice nevertheless, energy policies remain part of the authoritative control at a national state

[68] UNCLOS was concluded in 1982 with all EU countries and Norway being parties of the Agreement. It regulates all ocean space with the rights and responsibilities in their use and defines the judicial nature and outer limits of the continental shelf. The rights mentioned here are regulated in articles 77, 79 and 81.

[69] Treaty for the Functioning of the European Union (TFEU), Title I, article 1.

level and only voluntarily cooperate the States at a European level. In other words, there is no mandatory, in terms of enforcement or penalties, close collaboration between the States and the Union in the field of upstream oil and gas.

For this reason the Union has provided the energy sector in Europe with great independence of action. Of course the European legislation is based upon the fundamental policies of the free internal market and the protection of the environment during the various energy operations that need by all means to be obtained. However, there has been a certain degree of initiative-taking and independent operations within this legal framework in the offshore petroleum operations. Either because of the recognized –by the EU- competence and experience of the petroleum sector in certain parts in Europe or because the involved industries did not wish interference by a European institution, this was the framework into which these activities had been conducted for years.

Consequently, some States as well as private parties may regard this Proposal as a threat to their long-standing offshore regimes. The situation becomes a bit complicated because on the one part these countries are willing to share their competency in offshore oil and gas activities throughout Europe, but on the other hand they wish to keep their own policies intact. It is also normal that especially now, as offshore petroleum activities in Europe are expanding, the European Union as a central regulatory institution aims to establish a high safety level for people and the environment throughout Europe.

It is obvious therefore that the reasons that have created debate about this Proposal are political, legal and economic. The States that react want to keep their regulatory autonomy in offshore safety matters that are considered to be the best in the world. However, many claim that *'if this perception of reality prevails, it will only increase the risk of accidents'*[70]. Apart from that, Norway does not wish a Brussels's interference in a field where its experience is much longer than the existence of the EU itself and could even

[70] From the speech of Frederic Hauge, Bellona President, before ONS annual conference in 2010, Stavanger, Norway.

lead to a reduced level of safety. Alternatively, as a non-EU Member Norway invokes that the attempted regulation does not fall into the EEA scope, therefore it cannot be binding to the EEA States. At this point there is an obvious disagreement, since in the Proposal it is written that the text has EEA relevance.[71]

On the other side, the UK disagrees with the shift of the regulatory offshore control from the Member States to the Commission. As an EU Member it tries to find the best legal and political solution in order to safeguard its regime: a Directive has a legal basis within the EU and can satisfy the Commission's will to establish common safety standards across Europe. Most importantly for the UK, a Directive will actually bring no changes to the British offshore safety regime, since the goals prescribed can be achieved through the already existing system.

The Commission is therefore called on to take many aspects into consideration in order to successfully fulfill its goal. Geographic conditions, previous experience and knowledge and scientific expertise are only some of the factors that determine the safety in offshore petroleum activities. It is difficult to establish one regime for offshore oil and gas operations in an area which presents so many inequalities in all the above sections. Political and economic differences split the Mediterranean and the Black Sea countries from the ones in North Europe. Therefore the same legislation most probably cannot be applied in a business that requires so sensitive management.

The question that remains, though, is to what extent the goal of this Proposal is achievable. Can Europe establish a unified offshore safety regime? What factors need to be taken into account? Has the Commission weighted all possible negative effects? How could it harmonize the need for preventing tragedies in offshore Europe with the interests of the North Sea countries? All these are difficult questions that cannot be easily answered.

[71] This is mentioned in both latest formats of a Regulation and a Directive.

7.2 Future challenges

The point is that protection of life and environment falls within the Union's primary functions; nobody can demand that European Institutions stay unconcerned about the dangers that offshore petroleum activities entail. There is no meaning in examining why the Union decides to regulate centrally safety offshore just now – undeniably, accidents that happen somewhere in the world constitute motives for re-assessment and re-structuring of regulations. It is vital to consider though that the well-established offshore safety regimes must be maintained and promoted to other places in Europe that do not have such political stability or economic and technological capacity as the North Sea countries.

From their side, the North Sea neighboring countries should collaborate closely with the Union and share their knowledge and offshore safety practices. As was analyzed above, there is definitely such intention from Norway and the UK; the objection of both countries towards this Proposal has not to do with them being arrogant or isolated from the less competent States in the field –they simply trust their regulators and industries that have been operated in the area for a long time and they wish to keep their regimes within their national sovereignty. As stiff as their position may sound, their will to safeguard what has been hard obtained, shall be comprehended.

However, there are other voices in the field who think that there will be no such overall control from the Union and that the Member States with their industries are exaggerating. The Commission will simply harmonize practices and standards in an attempt to bring a high safety level in all European offshore oil and gas activities. It is surprising to see how NGOs and specialized companies such as classification societies see very positively the need for changes (especially enforcement measures) at a European level. Requirements from these parties also include strict prescriptive regulations, stronger physical inspections and independent verifications. It is evident that there is a conflict of interests between the States/industry and the NGOs or citizens that creates undesirable situations among parties of the same business.

Therefore, it is requested by both States and the EU to work actively towards the common goal, which is the establishment of a high safety level in offshore petroleum operations in Europe. Both parties shall try to find a common place for their arguments with a direction towards better safety offshore. It seems that the European Commission has already taken into consideration the points raised by UK in terms of the format of the Proposal. The majority in the European Council is in favor of a Directive, with the advantages that such a solution entails. This decision is very encouraging for the comprehension and cooperation between States and the EU.

However, the challenges that the Union is called to face still exist. Needless to say, the Union comprises various nations with different economic strengths and operations generally. The offshore petroleum sector is of high importance and its safety management from the Union has to be conducted very carefully. Of course the already successful regimes should in no case be put in danger. Additionally, safety is obtained through long-lasting experience which becomes a whole industry culture. In other words, it is impossible to ‘decide’ safety through a piece of legislation. If the national authorities are incompetent or if the State is hesitant to take initiatives and encourage internal control from the industry, the consequences will be severe.

8 Concluding remarks

Offshore petroleum operations are of significant importance for the States that exploit their petroleum resources as well as for the European Union, since welfare for the economy and the people is ensured. Such activities are strongly encouraged because they contribute to the common energy and foreign policy of the Union, an important chapter of the TFEU that regulates the Union's external actions.

The allocation of offshore oil and gas operations in Europe is quite simple: Countries in the North Sea produce 90% of the oil and gas in Europe. This has been the case for decades, therefore it is only normal that these countries have acquired a great degree of experience. Until today, the leading States of the business, Norway and UK, have operated quite independently and established national safety regimes in order to protect people and the environment. Although accidents have occasionally taken place, the offshore safety regime of the North Sea is considered to be nowadays among the best in the world. For this reason, these regimes can serve as a template to further promote safety offshore. Taking into account the hazardous character of the operations, the European Commission has introduced a piece of legislation in order to regulate safety offshore. However, the Proposal has raised many objections from the expert countries.

Although the Union is facing far more complicated problems at the moment - economic, issues of European consistency or even survival- the matter of offshore safety shall not be underestimated. An accident in an offshore petroleum installation in the European waters would have fatal consequences on human lives, marine environment and on the economy in general and thereby also on the licenses to operate on which all oil companies depend. Given the present harsh economic circumstances in Europe, fears are growing that involved countries will proceed to cost-cutting measures in terms of equipment, maintenance, and education of personnel. So it is at this point that a dynamic intervention of the Union is requested in order to ensure safe practices offshore.

Of course this should be done without harming the successful regimes. The Union is lucky to have in its team highly competent partners; therefore it should listen to their views and use them in the best way in order to achieve a high level of safety. The arguments of the different parties are understood, but it is necessary that all work together positively towards the common aim, which is a safe working and natural environment while operating in petroleum production at sea. Economic growth can only be guaranteed through safety of people and the environment – that is a challenge that the Union is called to face.

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UNCLOS – United Nations Convention on the Law of the Sea, 10 December 1982

Working Environment Act 15 June 2005

10 List of abbreviations

EEA European Economic Area

EMSA European Maritime Safety Agency

FSA Formal Safety Assessment

HSE Health Safety Environment

MHR Major Hazard Report

NCS Norwegian Continental Shelf

PA Petroleum Act

PED Petroleum Engineering Division

PSA Petroleum Safety Authority